

Annexure S: Psychiatrist letter

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Our Ref:
Date:

Telephone:
Facsimile:
E-mail:

(NAME)
ADDRESS:

Dear Doctor (NAME)

CLIENT NAME:
DOB:

SAMPLE

Thank you for agreeing to examine and prepare a report on our above named client, who has been charged in the court with the following offence:

We enclose all the relevant material in our possession, namely:-

- a)
- b)

Could you please prepare a report considering the following issues:

1. Whether, in your opinion, (CLIENT) suffers from any mental disease, natural mental infirmity, or other relevant condition
2. If so, the nature of such condition, its duration and severity, and your prognosis
3. Whether, in your opinion, our client was of "unsound mind" at the time of the alleged offence. Section 109 of the *Mental Health Act 2016* defines "unsound mind" to mean "a state of mental disease or natural mental infirmity described in the Criminal Code, section 27(1), or a state of mind described in the Criminal Code, section 28(1) for which the Criminal Code, section 27(1) applies. Section 109(2) of the *Mental Health Act 2016* states '*unsound mind*' does not include a state of mind resulting, to any extent, from intentional intoxication or stupefaction alone or in combination with some other agent at or about the time of the alleged offence'. Section 27 of *The Criminal Code*, in turn, refers to "such a state of mental disease or natural mental infirmity as to deprive the person of capacity to understand what the person is doing, or of capacity to control the person's actions, or of capacity to know that the person ought not to do the act or make the omission"

To satisfy this test, it is sufficient if the person is deprived of only one of these capacities. However, to satisfy the test, the person must have been deprived of the capacity, and it is not sufficient if the relevant capacity was only impaired.

Would you please give your opinion as to whether it is more probable than not that our client was deprived by a mental disease or natural mental infirmity of any one or more of those capacities (please specify which) at the time of each of the alleged offence.

Further, if our client was affected by alcohol or illicit drugs at the relevant time, in the absence of such alcohol or drugs, was her mental state sufficient to deprive her of one of the three (3) capacities described above. In other words, was the mental disease such that, by virtue of the disease alone, our client was deprived of one of those capacities.

4. Whether, in your opinion, (CLIENT) is currently "fit for trial". This is not defined in the *Mental Health Act 2016*.

The test for whether a person is fit to plead at their trial and to instruct counsel is contained in the following passage from *R -v- Presser* 1958.00 VR 45:

"He needs, I think, to be able to understand what it is that he is charged with. He needs to be able to plead to the charge and to exercise his right of challenge. He needs to understand generally the nature of the proceeding, namely, that it is an inquiry as to whether he did what he is charged with. He needs to be able to follow the course of the proceedings so as to understand what is going on in court in a general sense, though he need not, of course, understand the purpose of all the various court formalities. He needs to be able to understand, I think, the substantial effect of any evidence that may be given against him; and he needs to be able to make his defence or answer to the charge. Where he has counsel, he needs to be able to do this through his counsel by giving any necessary instructions and by letting his counsel know what his version of the facts is and, if necessary, telling the court what it is. He need not, of course, be conversant with court procedure and he need not have the mental capacity to make an able defence; but he must, I think, have sufficient capacity to be able to decide what defence

he will rely upon and to make his defence and his version of the facts known to the court and to his counsel, if any.”

Under the previous *Mental Health Act* of 2000, fitness was defined as “fit to plead at the person’s trial and to instruct counsel and endure the person’s trial, with serious adverse consequences to the person’s mental condition unlikely.” While there is no definition of fitness in the *Mental Health Act 2016*, serious adverse consequences to the person’s mental condition are still relevant to fitness.

If you are of the opinion that our client is unfit for trial, could you please state whether you believe the unfitness is of a permanent nature.

5. Your opinion regarding the future management of our client including whether she requires any hospitalisation, treatment, or counselling. Specifically, could you state whether the Mental Health Court should make a forensic order or treatment support order under Division 2 or 3 of the *Mental Health Act 2016*, if our client is found of unsound mind in relation to the alleged offence or is found unfit for trial, the unfitness being of a permanent nature.

Under the Act, the Court may make a forensic order (mental health) or a forensic order (disability). When making either order, the court must decide the category of the order and, if the category is inpatient, any limited community treatment for the person. In deciding whether to make a forensic order, the Court must have regard to the treatment and care of forensic patients and the assessment and management of risks relating to forensic patients receiving treatment in the community. Under sections 138 and 139 of the *Mental Health Act 2016*, the court may order limited community treatment or decide the category of a forensic order is community only if the court considers there is not an unacceptable risk to the safety of the community because of the person’s mental condition (including the risk of serious harm to other persons or property).

Under a forensic order the Court may impose conditions it considers appropriate such as a condition that the person not contact a stated person, and can make recommendations it considers appropriate about particular intervention programs.

Under section 143 of the *Mental Health Act 2016*, provided the Mental Health Court considers a person’s unsoundness or unfitness is not due to an intellectual disability, and the court considers the person does not need treatment and care for any mental illness, then the court must make a treatment support order if the court considers a treatment support order, but not a forensic order, is necessary because of the person’s mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property. The court may impose conditions it considers appropriate in a treatment support order. Under section 145, if a court makes a treatment support order for a person, the court may only decide the category is inpatient if the court considers the person’s treatment and care needs, the safety and welfare of the person, or the safety of others cannot reasonably be met if the category of the order is community. If the category ordered is inpatient, the court may approve limited community treatment having regard to the purpose of limited community treatment.

If our client is found unfit for trial and the unfitness is not of a permanent nature the Court must make a forensic order or a treatment support order. The court may order limited community treatment or decide the category of a forensic order is community only if the court considers there is not an unacceptable risk to the safety of the community because of the person’s mental condition (including the risk of serious harm to other persons or property).

6. Any other matters you consider relevant.

We envisage that you will be interviewing (CLIENT) on our behalf and any information obtained by you may well be used in the preparation of the case. All such information, therefore, should remain confidential to the defence. Furthermore, our retainer is on the condition that you will not consent to further examine and/or report on our client in relation to the current charges at the request of any other party, without our express consent in writing. We confirm that our retainer is on the condition that any information viewed or obtained by you in the course of your involvement with this case, including the fact that we have engaged you, should remain confidential and should not be disclosed to any other person based on client legal privilege.

Upon receipt of the report we undertake to pay your fees at the applicable Legal Aid scale which is \$1000 per hour. Please contact the writer immediately if the amount approved is unlikely to cover the cost of assessment and report so that additional funding approval can be arranged.

Should you require any further information, please contact (LAWYER) on (PHONE)

Yours sincerely

(NAME)
(POSITION)
(FIRM)

SAMPLE